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EXHIBIT A

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MEJ

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SANJAY PARIKH, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. NETFLIX, INC., WAL-MART STORES, INC. and WALMART.COM USA, LLC, Defendants.	VIA FAX No. CV 09 0496 CLASS ACTION COMPLAINT FOR VIOLATION OF THE SHERMAN ACT DEMAND FOR JURY TRIAL

Plaintiff Sanjay Parikh, individually and on behalf of a class of all those similarly situated, brings this action for treble damages and injunctive relief under the antitrust laws of the United States against defendants Netflix, Inc. ("Netflix"), Wal-Mart Stores, Inc. ("Wal-Mart Stores") and Walmart.com USA, LLC ("Walmart.com") (collectively, "defendants"). Plaintiff demands trial by jury. Plaintiff's allegations are upon personal knowledge, information, and belief, and the investigation of counsel, as follows:

INTRADISTRICT ASSIGNMENT

1. A substantial part of the events or omissions which give rise to the claims in this action occurred in the county of San Mateo, and as such this action is properly assigned to the San Francisco or Oakland division of this Court. Defendant Walmart.com is headquartered in San Mateo County.

JURISDICTION AND VENUE

2. Plaintiff brings this action under §§4 and 16 of the Clayton Act, 15 U.S.C. §§15 and 26, to recover treble damages and to obtain injunctive relief, and the costs of this suit, including reasonable attorneys' fees, against defendants for the injuries sustained by plaintiff and the members of the class by reason of the violations, as hereinafter alleged, of §§1 and 2 of the Sherman Act, 15 U.S.C. §§1 and 2.

3. The Court has jurisdiction under 28 U.S.C. §§1331 and 1337 and §§4(a) and 16 of the Clayton Act, 15 U.S.C. §§15(a) and 26.

4. Venue is proper in this District under 15 U.S.C. §§15 and 22 and 28 U.S.C. §1391(b) and (c) because, during the Class Period, as defined herein, defendants resided, transacted business, were found, or had agents in this District, and a substantial portion of the affected interstate trade and commerce described below has been carried out in this District.

5. This Court has personal jurisdiction over defendants because, *inter alia*, each of the defendants is headquartered in this State or has transacted business, maintained continuous and systemic contacts, purposefully availed itself of the benefits of doing business, and committed acts in furtherance of the alleged conspiracy in this State.

NATURE OF THE ACTION

6. On or around May 19, 2005, defendants entered into an agreement to divide the markets for the sales and online rentals of DVDs in the United States ("Market Division Agreement"), with the purpose and effect of dividing and allocating the market, and monopolizing and unreasonably restraining trade in the online DVD rental market.

7. The events that led to the illegal Market Division Agreement began in late 2004, when Netflix co-founder and CEO Reed Hastings "was doing [his] Christmas shopping," and "noticed how low Wal-Mart's prices were." Hastings then "called the CEO [of Walmart.com] in January and asked if he could have dinner." Then-CEO of Walmart.com, John Fleming, who reported directly to Wal-Mart Stores' CEO Lee Scott, accepted Hastings' invitation, and the two thereafter met and "started talking about how [they] could work together." The CEOs discussed the online DVD rental and DVD sales markets and how they could reach an agreement that would reduce or eliminate competition in those markets. As a result of the meetings and exchanges that followed, defendants entered into the contract, combination and conspiracy alleged herein.

8. Prior to entering into the Market Division Agreement, Netflix and Walmart.com directly competed with each other in renting DVDs online, and Netflix was a potential competitor with Walmart.com and Wal-Mart Stores in selling new DVDs to customers. However, by no later than May 19, 2005, defendants entered into an agreement by which Walmart.com would stop competing with Netflix in the online DVD rental business, and Netflix would promote new DVD sales by Wal-Mart Stores and Walmart.com and forgo competing with them in the sale of new DVDs.

9. Wal-Mart Stores' active participation in the conspiracy is confirmed by, among other things, the fact that prior to the announcement of the Market Division Agreement, John Fleming was promoted to Chief Marketing Officer of Wal-Mart Stores, and served on the company's Executive Committee. Upon the announcement of the Market Division Agreement, Fleming thus was acting in his capacity both as the Chief Marketing Officer of Wal-Mart Stores and the Wal-Mart Stores executive responsible for overseeing the operations of Walmart.com.

10. Defendants' conspiracy enabled Netflix to charge its customers higher subscription fees for online DVD rentals than it would have charged absent defendants' contract, combination and conspiracy, as well as Netflix's unlawfully acquired and maintained market and monopoly power.

11. As alleged below, this case is brought as a class action on behalf of all consumers in the United States, who, during the period May 19, 2005 to the present (hereinafter, the "Class Period"), paid a subscription fee to rent DVDs from Netflix. Plaintiff bring this action under §§4 and 16 of the Clayton Act to seek redress in the form of treble damages and other relief for their injuries resulting from defendants' violations of law on behalf of themselves and other similarly injured consumers nationwide and to seek a declaration that the Market Division Agreement is null and void.

PARTIES

12. Plaintiff Sanjay Parikh is an individual consumer who resides in Houston, Texas. Plaintiff purchased online DVD rental services directly from Netflix during the Class Period. The subscription fees Mr. Parikh paid to Netflix for online DVD rentals were greater than he would have paid absent defendants' illegal conduct as described herein.

13. Defendant Netflix is a Delaware corporation headquartered at 100 Winchester Circle, Los Gatos, California, 95032. Netflix, publicly traded on the NASDAQ under the symbol NFLX, exceeds $1 billion in revenues annually. Through its website, www.netflix.com, Netflix rents DVDs directly to consumers nationwide by charging monthly subscription fees, which entitle customers to rent DVDs pursuant to various subscription plans. Netflix has possessed a market share of at least 75% of the Online DVD Rental Market in the United States, as defined herein, at all times during the Class Period.

14. Defendant Wal-Mart Stores is the largest retailer in the United States. Wal-Mart Stores is a Delaware corporation headquartered at 702 Southwest 8th Street, Bentonville, Arkansas, 72716. Wal-Mart Stores is publicly traded on the New York Stock Exchange under the symbol WMT, with revenues approaching $400 billion annually. Through its retail stores and its website, www.walmart.com, Wal-Mart Stores sells DVDs directly to consumers nationwide. Wal-Mart

Stores sells far more DVDs than any other retailer in the United States, accounting for approximately 40% of all new DVDs sold to consumers domestically. Prior to the Market Division Agreement, WalMart Stores' wholly-owned subsidiary Walmart.com competed with Netflix in the Online DVD Rental Market through the "Walmart DVD Rentals" service, which was available on www.walmart.com.

15. Defendant Walmart.com is a wholly-owned subsidiary of WalMart Stores. Walmart.com is a Delaware company headquartered at 7000 Marina Boulevard, Brisbane, California, 94005. It is the online component of Wal-Mart Stores' retail empire that is the leading seller of new DVDs in the United States. Prior to the conspiracy alleged herein, Walmart.com was also a major competitor of Netflix in the Online DVD Rental Market through the "Walmart DVD Rentals" service, which was available on www.walmart.com. While its financials are not publicly reported by Wal-Mart Stores, Walmart.com sells DVDs directly to consumers nationwide. Customers who purchase DVDs via www.walmart.com may have them either mailed or otherwise delivered to them directly, or may pick them up at a WalMart Stores retail location via Walmart.com's and Wal-Mart Stores' "Site to Store" program.

16. Walmart.com and Wal-Mart Stores are, in essence, completely integrated and operated as a single commercial enterprise and hold themselves out to the public as such, by which Walmart.com is an internet sales channel for WalMart Stores, rather than being an independent business entity. Wal-Mart Stores is the registrant of the www.walmart.com domain name that is used to sell products and services by Walmart.com. Likewise, Wal-Mart Stores is the registrant of www.walmartdvdrentals.com. As early as 2002, Wal-Mart Stores president and CEO Lee Scott stated that "Walmart.com is more deeply integrated with the overall Wal-Mart operation than it has ever been." When Wal-Mart Stores promoted John Fleming to CEO of Walmart.com, analysts stated that the selection of Fleming "indicates a continuation of tighter integration between Wal-Mart's online and offline operations that Fleming has implemented over the past year." This dynamic has been described by some analysts as a "bricks-and-clicks strategy."

17. Both Wal-Mart Stores and Walmart.com are active participants in the conspiracy and each is liable for the unlawful conduct alleged herein, with each, among other things, participating

in, and benefitting from, the Market Division Agreement. Moreover, WalMart Stores directed, ratified, approved, supported, and otherwise aided and abetted Walmart.com's violations of law.

18. In addition to the interests as the 100% owner of Walmart.com, Wal-Mart Stores had strong incentive to enter into the Market Division Agreement, since it obtains substantial revenues from sales of new DVDs, as well as store traffic resulting in the sales of other goods, which would have been threatened by Netflix's entry into new DVD sales, and which were enhanced by Netflix's promotion of Wal-Mart Stores and Walmart.com through the Market Division Agreement. Moreover, it was Wal-Mart Stores that announced in part the Market Division Agreement. The announcement quoted John Fleming, who was then Chief Marketing Officer of Wal-Mart Stores, regarding the Agreement. In this and other press releases, Wal-Mart Stores invariably states that its "[o]nline merchandise sales are available at http://www.walmart.com/."

CO-CONSPIRATORS

19. Various other persons, firms and corporations, not named as defendants herein, may have participated as co-conspirators with defendants and performed acts and made statements in furtherance of the conspiracy. Each of the defendants acted as the agent or joint venturer of or for other defendants with respect to the acts, violations and common course of conduct alleged by plaintiff.

20. Whenever in this Complaint reference is made to any act, deed or transaction of any corporation, the allegation means that the corporation engaged in the act, deed or transaction by or through its officers, directors, agents, employees or representatives while they were actively engaged in the management, direction, control or transaction of the corporation's business or affairs.

CLASS ACTION ALLEGATIONS

21. Plaintiff bring this action on his own behalf and as a class action under Rules 23(a), 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of all members of the Class, as defined herein.

22. Plaintiff brings this action on behalf of himself and the members of the Class, defined as comprising:

All persons that paid a subscription fee directly to Netflix to rent DVDs in the United States at any time from May 19, 2005 through the present (excluding all government entities, defendants, their employees and their representatives, parents, subsidiaries, and affiliates).

23. Plaintiff does not know the exact number of Class members because such information is in the exclusive control of defendants. Due to the nature of the trade and commerce involved, plaintiff believes that there are millions of Class members.

24. The Class is so numerous and geographically dispersed that joinder of all members is impracticable.

25. There are questions of law and fact common to the Class and the members thereof. These common questions relate to the existence of the conspiracy alleged, and to the type and common pattern of injuries sustained as a result thereof. The questions include, but are not limited to

(a) Whether defendants engaged in a contract, combination or conspiracy to allocate markets in the United States;

(b) Whether defendants unreasonably restrained trade in the market for online DVD rentals;

(c) Whether defendants had the specific intent for Netflix to monopolize the market for online DVD rentals;

(d) The nature and character of the acts performed by defendants in the furtherance of the alleged contract, combination and conspiracy;

(e) Whether the alleged contract, combination and conspiracy violated §1 of the Sherman Act;

(f) Whether the alleged contract, combination and conspiracy violated §2 of the Sherman Act;

(g) The anticompetitive effects of defendants' violations of law;

(h) Whether defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole;

(i) Whether the conduct of defendants, as alleged in this Complaint, caused Netflix subscription fees to be higher than they otherwise would have been and thereby caused injury to the business and property of plaintiff and other members of the Class; and

(j) The appropriate class-wide measure of damages.

26. The questions of law and fact common to the members of the Class predominate over any questions affecting only individual members, including the legal and factual issues relating to liability and damages.

27. Plaintiff Parikh, a direct purchaser of Netflix's online DVD rentals, is a member of the Class. Plaintiff's claims are typical of the claims of other Class members, and plaintiff will fairly and adequately protect the interests of the Class. His interests are coincident with, and not antagonistic to, those of the other members of the Class.

28. Plaintiff is represented by competent counsel experienced in class action antitrust litigation.

29. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Class treatment will permit the adjudication of relatively small claims by members of the Class who otherwise could not afford to litigate antitrust claims such as are asserted in this Complaint. This class action presents no difficulties of management that would preclude its maintenance as a class action.

TRADE AND INTERSTATE COMMERCE

30. Defendants' conduct, as described in this Complaint, has taken place within the flow of, and substantially affected the interstate commerce of, the United States.

31. During the Class Period, defendants sold online DVD rentals in a continuous and uninterrupted flow of interstate commerce to customers located in states other than the states in which the defendants produced these products.

32. Defendants' activities had a direct, substantial and reasonably foreseeable effect on United States commerce

FACTUAL ALLEGATIONS

The Online DVD Rental Market

33. The Online DVD Rental Market is the market for the rental of DVDs online, by subscription, and for delivery by mail ("Online DVD Rental Market") in the United States. During the Class Period, Netflix's share of the Online DVD Rental Market was approximately 75%.

34. "DVD," as defined herein, refers to a Digital Video Disc or Blu-ray Disc containing commercially recorded entertainment programs for personal viewing. As defined herein, "DVD" does not refer to blank Digital Video Discs, which are used to store or record data.

35. In the Online DVD Rental Market, for a monthly subscription fee, a consumer may rent DVDs from an online service provider, such as Netflix, Blockbuster Online, or (prior to May 19, 2005) Walmart DVD Rentals. There are no late fees and no due dates, but, within any given plan, the consumer pays the subscription fee regardless of how many DVDs he or she rents per month. Thus, even a consumer who does not rent a DVD for months is still charged the subscription fee, a business strategy Netflix CEO Reed Hastings has compared to a gym membership.

36. From the consumer's perspective, online DVD rentals are a differentiated service that is not reasonably interchangeable with traditional bricks-and-mortar video rental. In traditional video rental from physical stores, consumers drive to or otherwise arrive at the store, find (or do not find) what they are looking for, and pay on a per-DVD basis for their selection(s). After the designated rental period of one or more days, usually depending upon the release date of the DVD, the consumer returns his selection or potentially incurs late fees. During the Class Period these late fees have accounted for a substantial percentage of the revenues in traditional video rental stores. There are no late fees or due dates in the Online DVD Rental Market.

37. There are numerous other practical indicia of the Online DVD Rental Market being a relevant product market, distinct from other forms of DVD rental, including:

(a) No direct price competition exists between online rental and other forms of DVD rental, whether in-store, kiosk or video downloading, which are not reasonably interchangeable with online DVD rental. For example, online DVD rentals generally are priced on a monthly subscription basis. Within any given plan, the subscription rate is independent of the number of

DVDs the customer actually rents in a month. In-store DVD rentals, kiosks and downloading generally are priced on a pay-per-view basis. Also, changes in the price of online rentals do not closely track changes in the price of in-store rentals. The pricing of online rentals is generally nationwide in scope and is not affected by local in-store prices and competition. As a result, the pricing of online rentals would generally be the same to a customer, regardless of whether the nearest rental store is two minutes or two hours away. Online rentals generally offer additional services, such as movie reviews, customer specific recommendations based on viewing and preference history, and other metrics of popularity. The cross-elasticity of demand between these products is such that a small increase in price would not cause consumers to switch from online rental to in-store rental and vice versa.

(b) Online rentals fundamentally differ from in-store rentals in that on-line rentals (1) do not require travel to a store (including a second trip to return the DVD and potentially multiple trips if the store does not have the DVD in stock at the right time), (2) are available to anyone with a postal address, regardless of proximity to a store, (3) are primarily subscription-based services, and (4) provide a much wider selection of titles than a brick-and-mortar store can and does. For these reasons, among others, online and in-store DVD rentals are not reasonably interchangeable. Likewise, other modes of content distribution, such as kiosk, video-on-demand, and downloading, among other forms, are not reasonably interchangeable with online DVD rentals for a number of reasons, including relative selection and convenience for consumers, pricing, as well as, from the supply perspective, licensing considerations and technological limitations.

(c) The online rental market is recognized as a distinct market by the public and the industry, including by defendants. Netflix CEO Reed Hastings has acknowledged that while video downloads and video-on-demand ("VOD") may be a competitive force in the future, DVDs have been and will be the dominant medium for years to come, making the entry of video downloads and VOD not timely enough to be considered a competitive force in the Online DVD Rental Market during the Class Period.

38. Online DVD rentals are also a separate market from DVD sales. The pricing of DVD sales and online DVD rentals is very different. For example, the price to buy a new DVD depends

heavily on how popular it is, including whether it is a new release or how successful the title originally was at the box office or on television. By contrast, online DVD renters generally charge based on a subscription fee, regardless of whether the consumer is renting popular or obscure DVDs. The industry and the public perceive online DVD rentals as separate from DVD sales, whether in-store or online. The factors motivating a consumer to buy a DVD are different from those that lead to renting a DVD. The former generally applies to DVDs that the consumer (or his family or friends) intends to view numerous times. The latter generally applies to DVDs that the consumer intends to view once and then return. DVDs sold at retail have other distinguishing characteristics, such as packaging and special features not available with rentals, which are delivered unadorned in envelopes. In addition, the fact of whether a DVD is new or used is not an issue in rental, but is a significant factor in sales, for used DVDs are sold at a significant discount to their new counterparts, due to them being relatively less desirable to consumers. DVD sales and online rentals also are not reasonably interchangeable for consumers intending to collect physical DVDs or to give a DVD as a gift. The cross-elasticity of demand between these products is such that a small increase in price would not cause consumers to switch from online renting to purchasing DVDs and vice versa.

The Illegal Market Division Agreement

39. In early 2005, Netflix faced increasing competition from Walmart DVD Rentals and from Blockbuster Online, the latter of which had just entered the online rental market. The increased competition from Wal-Mart, however, posed a significant threat to Netflix. One analyst at the time explained that "[s]ince its core business is online DVD rentals, Netflix might have been the company most threatened by Wal-Mart's push into the sector." That publication further noted, "Because of its size, buying power and agreements with movie distributors, Wal-Mart could have put significant pricing pressure on Netflix over time."

40. By June 2004, Netflix was charging $21.99 for its most popular subscription rental plan. Blockbuster entered the online market in earnest in August, at first charging $19.99 but then reducing its price in November to $17.49 for its similar plan. After that, the Wal-Mart DVD Rentals rate was reduced from $18.76 to $17.36. In the wake of these price cuts, Netflix reduced its prices by nearly 20% (to $17.99 per month) soon thereafter. Then, Blockbuster further decreased its price

to $14.99 – over 15% below Netflix's already reduced price and more than 30% below the price Netflix was charging just months earlier.

41. Meanwhile, Wal-Mart Stores and its wholly owned subsidiary Walmart.com, which had established themselves as the leader in new DVD sales, were facing increasing competition from in-store and online channels of distribution in new DVD sales, including competition from Amazon.com. At the time, Netflix was a significant potential additional competitor, since it had a subscriber base of approximately three million customers known in the industry to be prolific DVD buyers, and the sales and profits of Wal-Mart Stores and Walmart.com stood to suffer if Netflix began selling new DVDs to these customers. Conversely, Wal-Mart Stores and Walmart.com stood to gain significant additional sales and profits and to gain further market share in the sale of new DVDs if these customers were to make their purchases of new DVDs from them instead.

42. In early January 2005, Wal-Mart dropped the price on its most popular DVD rental plan significantly – to $12.97 per month – creating further price pressure on Netflix to reduce its DVD rental prices. Even Netflix's CEO Hastings admitted at the time that Wal-Mart's DVD rental "***prices are so much better than anywhere else on the Internet" and that "[i]t's a huge difference [but] our customers didn't know about it***." This growing price disparity plainly was not good news for Netflix, even though it was for its customers, who were destined to soon find out. In order to respond to the increased competition, Netflix therefore would have been forced to lower its prices and thereby reduce its profits in order to keep its customers. This provided the perfect opportunity for Hastings to make his move.

43. Faced with this increasing competition, the Chairman and CEO of Netflix called John Fleming, then the CEO of Walmart.com, and invited him to dinner to discuss their companies' DVD sales and rentals businesses. Fleming accepted the invitation; the two met together in January 2005 and, according to Hastings, "started talking about how [they] could work together." They proceeded to embark upon a scheme that would result in the contract, combination, conspiracy and agreement referenced herein as the Market Division Agreement.

44. On April 21, 2005, in Netflix's first quarter earnings call with financial analysts, held after the January dinner but only two weeks prior to the public announcement of the Market Division

Agreement, Hastings plainly described the motive for Netflix to conspire with Wal-Mart Stores and Walmart.com:

> In terms of profitability over the coming years, the key issue is the number of major competitors. If there are only two major players, Blockbuster and Netflix, the profitability may be substantial like other two-firm entertainment markets. If on the other hand Amazon, Wal-Mart, Blockbuster and Netflix are all major competitors in online rental, then profits would likely be small.

Hastings went on to "predict" on the conference call:

> [T]he likely case is [that] online rental becomes a two-firm market over the coming years.

45. On May 19, 2005, shortly after Fleming had been promoted to Chief Marketing Officer of Wal-Mart Stores, defendants issued a joint press release that revealed the existence of the Market Division Agreement, by which they unlawfully divided and allocated the markets for DVD sales and rentals, and did, in fact, create the two-firm market that Hastings sought. Recognizing the tremendous benefits that this improper agreement would bring to defendants, if not consumers or competition, Hastings stated that "This agreement bolsters both Netflix's leadership in DVD movie rentals and Wal-Mart's strong movie sales business . . . ."

46. The news of the Agreement was featured in a number of newspapers and other publications in articles with the following headlines:

- "Wal-Mart and Netflix Scratch Each Other's Backs";
- "Wal-Mart, Netflix agree on DVD deal";
- "Truce in DVD-rental wars";
- "Wal-Mart, Netflix Team Up for DVD Rentals";
- "Wal-Mart and Netflix: 'An Alliance'"; and
- "Wal-Mart loves Netflix; And vice-versa."

47. Beginning on May 19, 2005, Walmart.com, as agreed, did in fact exit the online rental business. Walmart.com announced to all of the subscribers to the "Wal-Mart DVD Rentals service" that it was exiting the online DVD rental business and provided those subscribers with the opportunity to become Netflix subscribers at their current Wal-Mart rate for one year from the date of sign-up. Walmart.com took additional steps to affirmatively implement the Market Division

Agreement by promoting and referring its customers interested in online DVD rentals to Netflix by including a link to the virtual Netflix store on its website. Since the date of their joint announcement on May 19, 2005 (apart from the short period of time that Walmart.com used to wind down its existing online rental business), neither Walmart.com nor Wal-Mart Stores has participated in the Online DVD Rental Market, and Netflix has not sold new DVDs.

48. Under the Market Division Agreement, Netflix, Wal-Mart Stores and Walmart.com agreed that they would restrain trade and seek to reduce and/or eliminate competition. In agreeing to promote DVD sales by Wal-Mart Stores and Walmart.com and refrain from entering the market for new DVD sales, Netflix provided consideration for the agreement with WalMart Stores and Walmart.com that Walmart.com would exit the Online DVD Rental Market. This confirmed to Wal-Mart Stores and Walmart.com that Netflix would not enter the market to sell new DVDs, as Netflix was well-positioned and otherwise had unilateral economic incentive to do. Since entering into the Market Division Agreement, neither Wal-Mart Stores nor Walmart.com has rented DVDs online and Netflix has not sold new DVDs. The Market Division Agreement enhanced defendants' dominant market positions and harmed competition, including enabling Netflix to charge higher subscription prices for online DVD rentals than it would have had they not entered into the agreement.

49. As a result of the Market Division Agreement, downward pricing pressure from Walmart.com was eliminated and the Online DVD Rental Market was reduced to two competitors. Absent the Market Division Agreement, Netflix would have lowered its prices no later than May 19, 2005. As a result of the elimination of a competitor in this Online DVD Rental Market, Blockbuster was able to raise its subscription price in July to match that of Netflix, from $14.99 per month to $17.99 per month, and Netflix was able to maintain its price without having to lower it to compete with the combination of Wal-Mart and Blockbuster, in accord with Hastings' expectation that the profitability of a two-firm entertainment market would be substantial for Netflix. In Netflix's next earnings call, on July 25, 2005, Hastings boasted:

> Last quarter we said on-line rental was shaping up to be a two-player market, and that is indeed what is happening.

50. The Market Division Agreement was not in the independent self-interest of Wal-Mart Stores, Walmart.com or Netflix. Neither Wal-Mart Stores nor Walmart.com would have wanted Walmart.com to withdraw from the online rental market, encourage its subscribers to be transferred to Netflix, and promote Netflix's rental business absent substantial consideration from Netflix, such as an agreement not to compete for new DVD retail sales. But for the Market Division Agreement, Walmart.com would not have exited the Online DVD Rental Market when it did. Likewise, Netflix would not have foreclosed its opportunity to sell DVDs to its millions of subscribers – a base of customers who purchase on average 25 DVDs per year each – and would not have promoted new DVD sales by Wal-Mart Stores and Walmart.com, rather than its own sales, absent an agreement from them not to compete against Netflix's online rental business.

MARKET AND MONOPOLY POWER

51. At all relevant times, Netflix dominated the Online DVD Rental Market. Netflix has an approximate market share of 75% in the Online DVD Rental Market, and is far and away the market leader in the Online DVD Rental Market. As a result of this market share, Netflix has had and continues to have market and monopoly power in the Online DVD Rental Market; it has the power to control prices or exclude competition in this Online DVD Rental Market.

52. Netflix's market and monopoly power is strengthened by significant barriers to entry in this market. There have been no significant market entrants in the over three-and-a-half years since the announcement of the Market Division Agreement. Online DVD rental is highly capital intensive, and a business must operate on a large scale to be successful. It requires the possession of an extensive nationwide network of distribution centers located throughout the United States to ensure timely delivery. It also requires stocking an extensive inventory of DVDs to maintain the selection of titles (approximately 90,000 as of February 2008) that consumers demand. A December 2006 *60 Minutes* report described Netflix's operations as follows:

> Here's how it works: the warehouse opens at 4 a.m. When the post office delivers the DVDs, Netflix renters send them back after watching them.
>
> "We get 100,000 returns and we open them one by one," Hastings says.
>
> Every DVD is examined for scratches before the ones on order are repacked and shipped out again by late afternoon. Nationally, Netflix moves more than 1.5

> million DVDs a day, making Reed Hastings one of the post office's top ten customers for first-class mail.
>
> While *60 Minutes* was at the warehouse, one of the employees was stuffing envelopes, at a rate of 1,000 per hour. And so she and all the other workers – associates they call them – break every 90 minutes for mandatory exercises to ward off carpel tunnel syndrome.
>
> Netflix uses the same sorting machines as the post office, which run through 17,000 envelopes an hour, grouping them by zip code; this pre-sorting gets them a postal discount.
>
> Special Netflix software keeps the DVDs in almost constant circulation. Most returns are sent right out again, without going back to the shelves.

53. As Netflix CEO Reed Hastings has observed, "When you think about the barriers to entry to this business, it is subtle because it appears easy. A kid can open a website. But the barriers to profitability are very large." Hastings further has noted that "opening a website that does rental is easy. What's hard is [creating] the scale to be able to do it profitably."

54. Since the implementation of the Market Division Agreement, the Online DVD Rental Market has been dominated by two firms: Netflix and Blockbuster. Blockbuster possesses nearly all of the remaining 25% of the Online DVD Rental Market that Netflix does not possess. During fiscal years 2005-2007 combined, Netflix earned nearly $3 billion in revenues, over $1 billion in gross profit, and a gross profit margin of 34.5%. As a result of Netflix's abuse of its monopoly power alleged herein, its subscription fees have been higher than they otherwise would have been.

55. Wal-Mart Stores and its wholly owned subsidiary Walmart.com combined have an industry-leading 40% of domestic DVD retail sales. During fiscal years 2005-2008 combined, they earned revenues in excess of $25 billion by selling DVDs to consumers. Both Wal-Mart Stores and Walmart.com benefit from the Market Division Agreement.

ANTICOMPETITIVE EFFECTS

56. Defendants' illegal acts and practices have caused anticompetitive effects in the Online DVD Rental Market. The subscription fees charged by Netflix to plaintiff, as well as the other members of the Class, were maintained at artificially high and supracompetitive levels. Plaintiff and the other members of the Class paid higher subscription prices to Netflix than they otherwise would have paid.

57. The Market Division Agreement (i) eliminated one of only three significant competitors in the Online DVD Rental Market, (ii) eliminated competition between defendants, and (iii) enabled Netflix to maintain market power and also acquire and maintain monopoly power in the Online DVD Rental Market. The Market Division Agreement has enabled Netflix to implement monopolistic and supracompetitive pricing in the Online DVD Rental Market.

58. The Market Division Agreement and defendants' activities in furtherance thereof have no procompetitive benefits. They do not create information that consumers need, nor do they create new or better products or services. Rather, they have served to reinforce the true anticompetitive nature of the Market Division Agreement by assuring, for example, that Walmart.com not only withdrew from the Online DVD Rental Market, but further enhanced Netflix's position in that market. Even if there were any such benefits, they would not outweigh any of the anticompetitive effects described herein, and, in any event, could be achieved by less restrictive means.

ANTITRUST INJURY AND STANDING

59. During the Class Period, plaintiff and the members of the Class have directly paid monthly DVD subscription fees to Netflix in the United States, and many continue to do so.

60. Plaintiff and the members of the Class have suffered, and many continue to suffer, injury of the type that the antitrust laws are designed to punish and prevent. Plaintiff and the members of the Class have paid, and many continue to pay, more to subscribe to Netflix than they would have, absent the Market Division Agreement. As a direct and proximate result of the unreasonable restraint of trade and market and monopoly power created by the Market Division Agreement, plaintiff and the members of the Class were, and many continue to be, injured and financially damaged in their businesses and property, in amounts that are not presently determined. As a direct purchaser and direct victim of defendants' antitrust violations, plaintiff is the most efficient enforcer of the antitrust claims alleged in this Complaint.

COUNT I

Sherman Act Section One (15 U.S.C. §1)
Illegal Market Division (Against All Defendants)

61. Plaintiff realleges each allegation set forth above, as if fully set forth herein.

62. Defendants have entered into a per se illegal market division agreement, in violation of §1 of the Sherman Act, 15 U.S.C. §1. Even if evaluated under the Rule of Reason, the Market Division Agreement is an unreasonable restraint of trade in violation of §1 of the Sherman Act, 15 U.S.C. §1.

63. Netflix and Walmart.com were actual competitors in the Online DVD Rental Market before and at the time of the Market Division Agreement. Netflix and WalMart Stores, including Walmart.com, were also potential competitors in new DVD sales. Wal-Mart Stores and Walmart.com were actual participants and Netflix was a potential participant, with the means and economic incentive to sell new DVDs absent defendants' illegal Market Division Agreement.

64. Defendants shared a conscious commitment to a common scheme designed to achieve the unlawful objective of dividing the markets for online DVD rentals and new DVD sales. The Market Division Agreement allocated the Online DVD Rental Market to Netflix, with Wal-Mart Stores and Walmart.com agreeing to no longer compete with Netflix. The agreement also allocated new DVD sales to Wal-Mart Stores and Walmart.com, with Netflix agreeing to refrain from selling new DVDs in competition with them, even though it had the economic incentive to do so. In addition to explicitly or de facto agreeing not to sell new DVDs, as part of the Market Division Agreement Netflix promoted Wal-Mart Stores and Walmart.com's new DVD sales business. As a result, Netflix provided significant consideration to Wal-Mart Stores and Walmart.com for their agreement that Walmart.com would withdraw from, and both Walmart.com and Wal-Mart Stores would not compete in, the Online DVD Rental Market.

65. The Market Division Agreement has created significant anticompetitive effects and no procompetitive benefits. It eliminated competition in the Online DVD Rental Market, raising prices paid by defendants' customers. To the extent that there are any procompetitive benefits at all

resulting from the agreement, they would not outweigh the agreement's anticompetitive effects. In any event, to the extent that there were any, they could have been achieved by less restrictive means.

66. As a result of this violation of law, Netflix's subscription prices charged to, and paid by, plaintiff and the Class are, and have been, higher than they otherwise would have been.

COUNT II

Sherman Act Section Two (15 U.S.C. §2)
Monopolization of Online DVD Rental Market (Against Netflix)

67. Plaintiff realleges each allegation set forth above, as if fully set forth herein.

68. Netflix has monopoly power in the Online DVD Rental Market

69. Netflix willfully acquired and/or maintained its monopoly in the Online DVD Rental Market by its acts and practices described herein, including by executing, implementing, and otherwise complying with the Market Division Agreement, in violation of §2 of the Sherman Act, 15 U.S.C. §2.

70. As a result of this violation of law, Netflix's subscription prices charged to, and paid by, plaintiff and the Class are, and have been, higher than they otherwise would have been.

COUNT III

Sherman Act Section Two (15 U.S.C. §2)
Attempt to Monopolize Online DVD Rental Market (Against Netflix)

71. Plaintiff realleges each allegation set forth, as if fully set forth herein.

72. If Netflix does not already have monopoly power, then Netflix has a high probability of success in achieving monopoly power in the Online DVD Rental Market.

73. With the specific intent to achieve a monopoly, Netflix, by its acts and practices described herein, including by executing, implementing, and otherwise complying with the Market Division Agreement, has attempted to monopolize the Online DVD Rental Market, in violation of §2 of the Sherman Act, 15 U.S.C. §2.

74. The probable and foreseeable consequence of the Market Division Agreement was to give Netflix control over prices and/or to exclude or eliminate competition in all or mostly all of the remaining Online DVD Rental Market, to the extent Netflix has not already succeeded.

75. As a result of this violation of law, Netflix's subscription prices charged to, and paid by, plaintiff and the Class are, and have been higher than they otherwise would have been.

COUNT IV

Sherman Act Section Two (15 U.S.C. §2)
Conspiracy to Monopolize Online DVD Rental Market (Against All Defendants)

76. Plaintiff realleges each allegation set forth above, as if fully set forth herein.

77. Defendants shared a conscious commitment to a common scheme designed to achieve the unlawful objective of the monopolization of the Online DVD Rental Market.

78. Netflix and Walmart.com were actual competitors in the Online DVD Rental Market before and at the time of the Market Division Agreement.

79. Defendants conspired with the specific intent, knowledge and purpose that their anticompetitive agreement would result in Netflix willfully acquiring and maintaining a monopoly in the Online DVD Rental Market.

80. Wal-Mart Stores and Walmart.com knew that the natural and probable consequence of the Market Division Agreement would be that Netflix would monopolize or have a high probability of achieving monopoly power in the Online DVD Rental Market. Defendants have committed overt acts in furtherance of their conspiracy, including entering into, complying with, and implementing the Market Division Agreement, in violation of §2 of the Sherman Act, 15 U.S.C. §2.

81. As a result of this violation of law, Netflix's subscription prices charged to, and paid by, plaintiff and the Class are, and have been higher than they otherwise would have been.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully requests that:

A. The Court determine that this action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, that plaintiff be appointed as class representative, and that plaintiff's counsel be appointed as counsel for the Class;

B. Defendants be adjudged to violate §§1 and 2 of the Sherman Act, 15 U.S.C. §§1 and 2;

C. The Court declare the Market Division Agreement between defendants announced May 19, 2005, to be unlawful, null and void, and a per se violation of §1 of the Sherman Act, 15 U.S.C. §1;

D. Defendants, their affiliates, successors, transferees, assignees, and the officers, directors, partners, agents and employees thereof, and all other persons acting or claiming to act on their behalf, be permanently enjoyed and restrained from, in any manner, continuing, maintaining or renewing the contract, combination or conspiracy having similar purposes or effect and from adopting or following any practice, plan, program or device having a similar purpose or effect, pursuant to §15 of the Clayton Act, 15 U.S.C. §29;

E. Judgment be entered for plaintiff and the members of the Class against defendants, jointly and severally, for three times the amount of damages sustained by plaintiff and the Class, under §4 of the Clayton Act, 15 U.S.C. §15, together with the costs of the action, including reasonable attorneys' fees, and such other relief as is appropriate;

F. Plaintiff and the Class be awarded pre-judgment and post-judgment interest at the highest legal rate from and after the date of service of this Complaint to the extent provided by law; and

G. Plaintiff and the members of the Class have such other, further, and different relief as the case may require and the Court may deem just and proper under the circumstances.

JURY DEMAND

Pursuant to Rule 38(a) of the Federal Rules of Civil Procedure, plaintiff demands a jury trial of all issues triable by jury.

DATED: February 3, 2009

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CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

ATTORNEY OF RECORD FOR PLAINTIFF
SANJAY PARIKH